

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN REINY JABS**, on January 20, 1999 at
3:00 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Reiny Jabs, Chairman (R)
Sen. Walter McNutt, Vice Chairman (R)
Sen. Tom A. Beck (R)
Sen. Gerry Devlin (R)
Sen. Pete Ekegren (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Greg Jergeson (D)
Sen. Ken Mesaros (R)
Sen. Linda Nelson (D)
Sen. Jon Tester (D)

Members Excused: None.

Members Absent: None.

Staff Present: Carol Masolo, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: SB 171 and SB 178

EXECUTIVE ACTION ON SB 171

Discussion by Committee:

Motion: SEN. MESAROS moved MOVED AMENDMENT FOR DISUSSION.

SENATOR MESAROS offered copies of Amendment SB017101.ads, **SEE EXHIBIT(ags15a01)** and moved the amendment for discussion. The concern surrounding this issue of hunting activity historically has been a concern of boundary and landowner identification. I made a statement to do anything I could to try to help satisfy some of the concerns that sportsmen viewed. See 2 of the amendment, page 1, line 20. There is a subcommittee reviewing general government and we authorized \$1.5 million including federal funds in the cadastral mapping of the state. I believe this will proceed quite rapidly the next several years. That will be a very integral tool in developing this. It will also have a positive aspect as far as emergency personnel, delivery services throughout the rural areas, there are other benefits associated with this.

CHAIRMAN JABS On the Dept., this is coming out of Ag Committee, you said Fish and Wildlife.

Doug Sternberg The codification instruction specifies that this new section 2b in title 87, Dept. means Dept. of Fish, Wildlife and Parks.

SENATOR TESTER Is this going to require FTE or can this be done with what they have on staff?

SENATOR MESAROS In reviewing part of that this morning, they have an allocation of funds within the Dept. to review that.

SENATOR DEVLIN If you're accelerating this in any form, they would have to be out at higher cost. This doesn't really accelerate it?

SENATOR MESAROS It says "shall work with". I haven't had a chance to visit with the Dept. to satisfy that question.

SENATOR BECK They have a nice pillow in FWP budget that they should be able to comply with that. That's one of their services. I don't want to put any more money or FTE in it; I think it could be accomplished with their existing program.

SENATOR DEVLIN We have a lot of Block Management. In everyone of them you get a map of that specific ranch. BLM also puts out maps, probably not as detailed as what FWP does on their Block Management. Those are very helpful to anybody down our way.

SENATOR HALLIGAN If we're looking to mapping the entire state to be able to deal with those boundaries, I'm afraid this is light years beyond the Block Management issue. I don't know how they'd

do it with the FTEs they have, all that public ground with checkerboard ownership.

SENATOR BECK I can get a Forest Service map now for \$4.00. This map shows federal, state and private land. The transfer of federal and state land is minimal, they just want to identify the private landowner on it. I think you could go right to the tax rolls and it wouldn't take very long to identify those parcels of property. Right now every hunter, if they get a Forest Service and Fish and Game map could go along the same line. They will identify state and federal lands. We have to give them some source of identification of the landowner.

SENATOR MESAROS The Dept. of Administration with the Dept. of Revenue is working on this cadastral mapping right now. There's one county completely finished and 10 or 12 others almost finished. They project within the next four years they'll have the entire state. It will be computerized so any transfer of land ownership will just be a matter of making one change. They can print any township section of any part of the state all across the state. I'm viewing FWP as working with that effort to satisfy the sportsmen.

SENATOR JABS There's a charge for these maps, isn't there? There'll have to be a cost.

SENATOR MESAROS We're just saying they shall work with them to develop these, there's nothing about fees.

SENATOR BECK I'm certain they'll try to recover their costs. If the Forest Service gives me a map, I pay \$4.00.

Motion/Vote: SEN. MESAROS moved that **AMENDMENT TO SB 171 BE ADOPTED. Motion carried unanimously.**

{Tape : 1; Side : A; Approx. Time Counter : 3:11}

Motion: SEN. MESAROS moved that **SB 171 BE ADOPTED AS AMENDED.**

SENATOR DEVLIN There's a problem in some of our areas where there is open water stream and they are doing their hunting for birds and big game from the water. The stream access bill says no hunting for big game from the water ways but I don't know that it says anything about birds. This individual says it happens frequently in his area. Hunters don't come on the land, they just float down the stream and shoot a duck, scramble out of the boat and grab the duck. It's disturbing to landowners that border that stream because the duck doesn't always fall in the taken area.

CHAIRMAN JABS According to this bill, they would have to have permission before they hit that duck.

SENATOR HALLIGAN People were working on this issue over the interim trying to get sportsmen organizations to educate people to ask for permission. Why not put a 2 year delayed effective date. In the controversial bill that was killed 2 years ago, was there discussion as to how we could resolve it, and what didn't happen that made this come back.

SENATOR MESAROS I made a sincere effort to work with the Consensus Council and representatives with various Ag and sportsman groups and met numerous times. As far as that discussion ever went, was how we could improve the posting on the land, more of a permanent type posting mechanism rather than orange paint. It's difficult to arrive at a real viable long term posting.

We all agreed that education and increased communication was a vital part of it. As far as elevating a common requirement to all hunting activities, there was no movement at all from sportsmen groups. Unfortunately, there are people who find a gate that doesn't happen to have a sign on it and go onto private property and that's where the conflict arises. Most of the sportsmen that I've visited with do ask and think they should ask. This bill doesn't affect them. This bill affects the ones that don't ask.

CHAIRMAN JABS It seems to me that if you're an avid hunter you have certain areas you hunt in, which you scout out ahead of time. They always call me. I raise corn for silage and the geese come in the fall. Some people are just going down the road, see a pheasant fly in a field and go get it.

SENATOR TESTER The key is communication. It's just respect. You like to know who is on your property.

SENATOR NELSON I see the problem is with the out of state hunters. We have so many of them in my area, they come from Minnesota, Wisconsin, Michigan and they don't know the area. They're going to have more of a problem with this.

SENATOR JABS I have people from Bozeman call and find out whose land it is. I've had calls from all over.

SENATOR HALLIGAN What is the penalty for violating this?

SENATOR MESAROS It's a misdemeanor with \$500 bond.

Doug Sternberg It's a standard Fish & Game misdemeanor, up to 6 mos. in jail or \$500.

SENATOR HALLIGAN I'd like to see the first offense as a warning, but after that they get nailed. But how would you know who got a first offense if you're going from property to property.

CHAIRMAN JABS Do you foresee people prosecuting? You just tell them to leave. I think very few ranchers are going to push that unless someone kills a cow or gets nasty.

SENATOR DEVLIN I experience the direct opposite from the remarks **SENATOR NELSON** made. The best hunters I've got are the out of state hunters. They're the ones that hunt every place they can in an area and ask ahead of time. I've had a lot better luck with them as far as asking, than I every had with the locals. The locals tend to think maybe they have a piece of the action and as such it's one of their entitlements.

CHAIRMAN JABS They're serious, they come to hunt. Some people, if they're out for an afternoon drive, they have their shotgun with them and if a pheasant flies over, they want to stop and get it.

SENATOR HOLDEN Out-of-state buyers. They're always going to have a problem with this. They move in from out of state, buy a little chunk of Montana and keep everybody off. That's where we're going to have problems with hunters. I don't plan on prosecuting anybody if they go on my land, and I never have.

SENATOR MESAROS This statute has been in effect since 1965 for big game hunting. This just treats all hunters the same. I don't think there will be a rapid escalation of convictions or any major change other than create some uniformity within hunting activities on private land. **SENATOR DEVLIN** mentioned the maps in Block Management. I personally use those and color code those maps. I hand it to the hunters, here's where you go. It works excellently. We can solve some problems.

SENATOR HALLIGAN How much public and private land were available to hunt on 10 - 20 years ago, what is it now. Is the pressure on private land becoming more because of closing some public lands.

SENATOR MESAROS I don't have any specific figures. Certainly outfitting has expanded. Out-of-state ownership has closed land that historically used to be open to the public, Montana residents. You are seeing more pressure to private lands and I think that is one of the reasons this issue is here.

CHAIRMAN JABS You have more people and more outsiders coming into the state because they found out it is great hunting.

SENATOR MCNUTT Both out-of-state and state interests are leasing up more private land for hunting privileges. Because of the state of Ag in our neck of the woods, these guys are leasing out the hunting rights on their private property and it has caused some problems where people think they have an inalienable right in there. I can't see any mischief in this bill, especially with the amendment. The pressure is going to get greater and greater. In the entire state of Texas, for example, there isn't any public hunting on private land unless you pay a fee.

SENATOR BECK In my area, where the elk hunting is prevalent, out-of-state land owners come in and buy up a couple sections and absolutely lock it off from everybody until the elk penetrate that piece of ground. They'll hunt it themselves the last week of hunting season while the elk are all still there. They're somewhat greedy because they want those big bulls for themselves. Soon as hunting season is over, the elk are on everybody else's land. This bill might keep the landowner from locking off more ground if they just know permission will be asked.

Motion/Vote: **SEN. MESAROS** moved that **MOVED SB 171 DO PASS AS AMENDED. Motion carried unanimously.**

{Tape : 1; Side : A; Approx. Time Counter : 3.30}

EXECUTIVE ACTION ON SB 178

Discussion by Committee:

SENATOR NELSON has amendment to the bill which makes sure people realize task force is voluntary and members shall serve without compensation. **EXHIBIT(ags15a02)**

Motion: **SEN. NELSON** moved that **AMENDMENT TO SB 178 BE ADOPTED.**
Vote: Motion **carried unanimously.**

Motion: **SEN. DEVLIN** moved that **SB 178 DO PASS AS AMENDED.**

SENATOR HOLDEN I have a problem with who is on the task force. The task force will have a person from DNRC, one from Dept. of Agriculture, a person with scientific aspects, a person with cultural knowledge and the spiritual aspects of wild plants, a representative of Tribal government, and somebody from the University system. This is for state land and tribal government won't make a decision of their own. I don't know if we have anyone in Montana that fits all those descriptions and would have

an understanding of our Montana culture. I just couldn't support that group of people to bring me back some real scientific knowledge or credibility of what they found. I'm concerned about sending this task force out and having them come back and say this plant is endangered. Then we get into land use problems. We don't want to have plants become extinct, but... Maybe in next session we might want to look at it again.

SENATOR NELSON This is on state land so they're not going to be going off scouring the hills just anyplace. The Governor is going to appoint the task force so I'm sure he's going to look at these various criteria and see that these people meet the criteria. The people who were here to testify certainly did have the scientific knowledge.

As far as the cultural, historical, spiritual aspect, these people are not just tree huggers, they are qualified people with some degrees. The tribal government is very interested in it because of its medicinal cultural aspects. They're very concerned about the decimation of Echinacea. I explained why they were not able to do this on the federal lands but they're certainly interested in bringing this back so it will add some impetus to perhaps do some regulation on federal lands. I don't know who you would suggest to be on the task force that would be any more qualified.

SENATOR EKEGREN The Dept. said they only get on the land once every 10 years. I would think the rancher leasing the land would be interested in holes being dug. I still see this as a forerunner for extinction. As I see it, nothing ever comes off that list. I was just curious how long the moratorium is supposed to last.

SENATOR NELSON The moratorium is for three years and we need to address this before the plant is in danger of being extinct. Then it's going to become more of an issue. I do want to address it from the livestock owner's perspective. Lessees don't always know that people can't go on there and dig. A man came to see me in my office and he didn't realize that they couldn't be on his land digging Echinacea. They had been on it last summer, they had cut the fence, gone in there and dug the Echinacea, cut the fence on the other side which adjoins private land, his cows got out on that and caused about \$9,000 worth of damage, according to that landowner. The insurance said only \$3,200 and they're in sort of a mess over that. I have another landowner that talked to me at the 4-H breakfast the next morning and she said they had seven cows that have had leg problems and had to be disposed of and they figure it's from dropping into these holes. There's the liability issue of hunters being out there and falling into these

holes with their guns and something happening and the insurances companies say well, you're just up a creek.

SENATOR TESTER I think the task force is real flexible because of the first line that precedes the letters, membership may include this, but is not limited to. It just gives some guidelines, I don't know about D either, I don't what kind of person that is but there are people in other areas that I know of in this state, and a number of them that would fit in the medicinal plant production. They're native to Montana, have been here their whole lives and have been doing this. I think it's a good idea, I don't know that it's going to do a heck of a lot of good. I think the landowners are going to have more of an effect on what gets trimmed and what doesn't, because now they have an opportunity to keep people off their ground and tell them there is penalty involved. I don't think it's a big bill, I hope it does some good.

SENATOR MESAROS You have some holes left and some degradation from digging this plant. A hunter out there twists his ankle or breaks his leg. Who is liable?

Doug Sternberg The hunter. If a hunter falls? A person who makes legal recreational use of state lands, that would include someone who bought the permit and is out there, the lessee is not liable.

SENATOR MESAROS If the lessee is not liable on state land, who is?

Doug Sternberg You're probably using the state land at your own risk for recreational purposes.

SENATOR NELSON How about on private land? This was the issue, that people didn't know where state land ended and private land began, and so they were onto the private land.

Doug Sternberg Then you get into some of the trespass statutes.

{Tape : 1; Side : A; Approx. Time Counter : 3.44}

SENATOR DEVLIN Did you inquire, does a person know you have to get a permit to recreate on state lands. Do they have to get a permit for this?

SENATOR NELSON They can't get a permit.

SENATOR DEVLIN Do they have a permit, though? A bill like this makes me very nervous because in a couple years I see it coming

back and it will be another moratorium on all these plants and the first thing I know, I'm out there and I don't know what kind of damage cattle can do to these plants. First thing, they're going to come to me and say, hey, can't lease you that anymore because they say it's so damaging to these wild roots that we can't lease it out anymore for grazing, so you have to stay off. I certainly don't want that to show up and I know from past experience it can, because BLM continually, in our country especially, finding endangered birds, endangered plants, all sorts of things like that, so I'm a little leery. **(TURN TAPE)**

SENATOR BECK There's a threat on this species right now and if we don't go along with it, then they will be on the endangered list.

SENATOR DEVLIN It's threatened now, it will be by the time the court gets through with it.

SENATOR BECK If I'm hearing what Linda's saying, it isn't threatened right now but if you don't put some kind of moratorium it could be, then we fall into the trap you're talking about.

SENATOR NELSON Hopefully, in this three year period we can get this established where there will be some commercial growth of it and that might help.

SENATOR MESAROS The Dept. has very limited resources and man power to go out and enforce this. How can this possibly be enforced.

SENATOR NELSON I would assume if it's against the law to do this you could call the sheriff's department. Once there's an issue made out of this, once somebody is nailed and there is publicity, that's going to go a long ways towards stopping it from happening. The fact that this bill is being considered and if it passes, the publicity it is getting will go a long ways towards stopping it. Not all of our laws are perfectly enforceable.

SENATOR JERGESON There aren't enough Fish and Game wardens to enforce this. The lessee who comes upon somebody who is doing some digging can use this moratorium as a basis for running them off. Lessees will enforce this because of the issues of unknown persons digging, disturbances to the soil and introduction of weeds. Our weed laws have some pretty stringent authority for governments to actually go in on a person's property and engage the weeds in combat and charge the landowner.

We may reach a point in 3 or 5 years where these plants do in fact qualify to be endangered. I think this is more a study,

period, with the imprimatur of the State of Montana on it. At the end of the three year period we may answer some questions to protect the lessee interest and make sure we don't come with some problems in the future.

SENATOR DEVLIN Mr. Hagener with State Lands said they already have a moratorium on the harvest of Echinacea. Is it a departmental rule or what.

SENATOR NELSON The Dept. of State Lands said they won't allow this on the recreational fee. It doesn't make it against the law, they just don't have permission.

SENATOR DEVLIN When they talk about cultivating it, they have one 5 acre plot at Bozeman that they put in a year ago and there's been no harvest yet, I don't know how many years that takes. I'm not so sure this group here is not looking out for their own hip pockets. They say they don't or can't buy it, so they're having to rely on commercially grown which they've said is not as good. I'm always leery of something where a group goes in to study and when they come back they want to study the study.

SENATOR HALLIGAN There's a civil penalty of up to \$1,000, but there's no criminal penalty I can see. State Lands then has to bring a lawsuit in order to collect a penalty of \$1,000 for each day.

Doug Sternberg I found the statute of restriction of liability on landowners. In Title 70 of the Property Code, "a person who uses property including property owned or leased by a public entity for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purposes if the person does not give the property owner a valuable consideration in exchange for the recreational use. The landowner owes the person no duty of care with respect to the condition of the property except that the landowner is liable to the person for injury to person or property for an act or omission that constitutes willful or wanton misconduct".

SENATOR HOLDEN called for a roll call vote.

CHAIRMAN JABS This bill can do no harm and I hope it will do some good.

SENATOR BECK missed the hearing and asked **SENATOR NELSON** for the background on this bill.

{Tape : 1; Side : B; Approx. Time Counter : 3.56}

Vote: Motion carried 8-3 on a roll call vote. SENATOR DEVLIN,
SENATOR EKEGREN, SENATOR HOLDEN voted no.

A discussion was held regarding Rancher/Cattlemen's Actual Legal Fund regarding contributions, the purpose of RCALF, and the suit they have challenging federal guidelines in implementing some of the rules for international trade due to all the imports.

ADJOURNMENT

Adjournment: 4:11 P.M.

SEN. REINY JABS, Chairman

CAROL MASOLO, Secretary

RJ/CM

EXHIBIT (ags15aad)